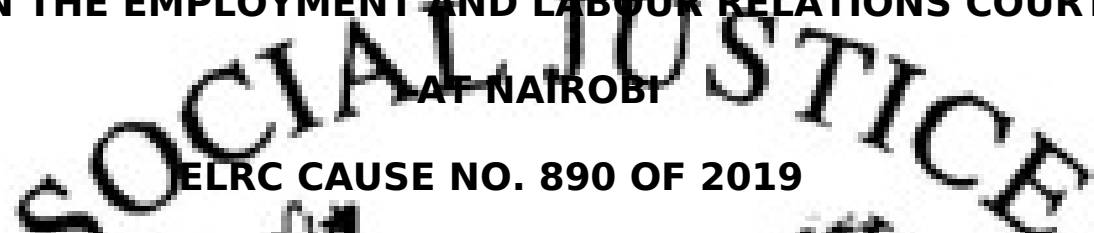


REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI**



ELRC CAUSE NO. 890 OF 2019

**BANKING INSURANCE AND FINANCE
UNION.....CLAIMANT**

VERSUS-

**SMEP MICROFINANCE BANK LIMITED.....
RESPONDENT.**

(Before Hon. Justice J. M. Njoroge)

RULING

1. By a judgment of this Court delivered on 28th September, 2024, the Court directed that the Labour Union undertake a headcount of all unionisable employees working for the respondent to ascertain whether the claimant had ascertained the needed simple majority under the Labour Relations Act for purposes of entering into a recognition agreement for purposes of collective bargaining.
2. The Chief Industrial Relations Officer appointed a Conciliator for that purpose. The headcount was conducted

and by its report dated 28th March, 2025, the Conciliator stated that the respondent had 174 unionisable staff. Both parties however contend that the findings by the conciliator did not finally resolve the dispute as it did not state that the claimant had attained the simple majority to enable the respondent enter into a recognition agreement with the claimant union for purposes of collective bargaining. According to the claimant, it was by virtue of the finding by the conciliator that the respondent attained the required simple majority therefore the respondent was obliged to sign the recognition agreement and start remitting to it the necessary union dues.

3. The respondent on the other hand contended that some of the alleged members had either withdrawn their membership to the claimant union, promoted to management or resigned or dismissed from employment. The respondent therefore denied that it refused to sign the recognition agreement but defended its position by saying that the claimant union had not attained the requisite simple majority under section 54 of the Labour

Relations Act. In response to this allegation, the claimant union stated that the respondent did not notify them of the withdrawal from membership as required by section 48(6) (7) and (8) and that resignation letters were only brought to the attention of the claimant union when they filed these proceedings.

4. The Court in its judgment delivered on 27th November, 2024 observed that the respondent had remitted a cheque of Kshs. 23,124 without attaching the list of those in respect of whom it made such remittance and further that the respondent admitted that it had in its employment 78 unionisable employees.

5. The conciliator's report dated 19th May 2024 found that the respondent had in its employment 252 employees spread across its 39 branches. Out of these, 174 were unionisable which translated to 69.04% and that 78 were not unionisable. The Conciliator having so found coupled with the fact that the respondent was alleging that some unionisable employees withdrew their membership did not comply with section 48 of the Labour Relations Act referred

to above, there is therefore no reason why the respondent cannot enter into a recognition agreement with the union for purposes of collective bargaining.

- 6.** Union membership is one of the fundamental principles of the International Labour Organization (ILO) primarily protected by Convention No. 87 (Freedom of Association) and Convention No. 98 (Right to Organize and Collective Bargaining). Workers are guaranteed the right to form and join unions without fear of discrimination, retaliation, or employer interference, including protection against dismissal for union activities. In this regard and from the foregoing and based on the directions by the Court in its judgment delivered on 28th September 2024 which has since been operationalized by the conciliation report dated 19th May, 2025 which found that the respondent had in its employment 252 employees spread across 39 branches out of which 174 were unionisable, there remains no justification to refuse to enter into recognition agreement with the claimant union.

7. The Court therefore orders that the respondent signs a recognition agreement with the claimant union within 30 days of this order and thereafter deduct and remit union dues as from the date of signing the recognition agreement. Parties to thereafter be at liberty to engage in collective bargaining for the purpose of augmenting and protecting the interests of the claimant union members in accordance with the conventions, the Constitution and applicable law of Kenya.

8. It is so ordered.

9. Dated at Nairobi this 6th day of February, 2026

Delivered virtually this 6th day of February, 2026

Abuodha Nelson Jorum

Presiding Judge-Appeals Division